

JASON AMICO,

Plaintiff,

V.

IDALBERTO ZALDIVAR-GALVES,

Defendant.

Case No. 1:22-cv-01499-SAB (PC)

**ORDER TO SHOW CAUSE WHY
DEFENDANT IDALBERTO ZALDIVAR-
GALVES SHOULD NOT BE DISMISSED
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(M)**

(ECF No. 17)

Plaintiff Jason Amico is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

This case is proceeding against Defendant Idalberto Zaldivar-Galvez for deliberate indifference to a serious medical need in violation of the Eighth Amendment.

On January 5, 2023, the Court an order directing electronic service of the first amended complaint on Defendant Idalberto Zaldivar-Galvez. (ECF No. 12.)

On March 2, 2023, a notice of intent to not waive service was returned with a notation to contact the Management Solution Contracts Team. (ECF No. 16.) Accordingly, service was thereafter forwarded to the United States Marshal (USM).

On May 5, 2023, the USM returned the summons unexecuted, noting that the waiver of service was mailed on April 4, 2023. (ECF No. 17.)

On May 3, 2023, the summons was forwarded to the Bakersfield office for personal service. (Id.) On May 4, 2023, the USM spoke with the receptionist at VipMD who stated that

1 Defendant Idalberto Zaldivar-Galvez has not worked at that office since about 2021 and they did
2 not have any forwarding information. (Id.) On May 5, 2023, the USM contacted other various
3 locations to locate Defendant Idalberto Zaldivar-Galvez, but was told no one by the name could
4 be located. (Id.)

5 Pursuant to Federal Rule of Civil Procedure 4:

6 If a defendant is not served within 90 days after the complaint is filed, the court “on
7 motion or on its own after notice to the plaintiff” must dismiss the action without
8 prejudice against that defendant or order that service be made within a specified time. But
9 if the plaintiff shows good cause for the failure, the court must extend the time for service
for an appropriate period.

10 Fed. R. Civ. P. 4(m).

11 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of
12 the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). “[A]n incarcerated
13 *pro se* plaintiff proceeding *in forma pauperis* is entitled to rely on the U.S. Marshal for service of
14 the summons and complaint and ... should not be penalized by having his action dismissed for
15 failure to effect service where the U.S. Marshal or the court clerk has failed to perform his
16 duties.” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v. Blandford, 912
17 F.2d 270, 275 (9th Cir. 1990)), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472
18 (1995). “So long as the prisoner has furnished the information necessary to identify the
19 defendant, the marshal’s failure to effect service is ‘automatically good cause....’ ” Walker, 14
20 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d 598, 603 (7th Cir. 1990)). However,
21 where a *pro se* plaintiff fails to provide the Marshal with accurate and sufficient information to
22 effect service of the summons and complaint, the court’s *sua sponte* dismissal of the unserved
defendants is appropriate. Walker, 14 F.3d at 1421-22.

23 Because the USM has not been successful in locating Defendant Idalberto Zaldivar-
24 Galvez, pursuant to Rule 4(m), the court will provide Plaintiff with an opportunity to show
25 cause why Defendant Idalberto Zaldivar-Galvez, should not be dismissed from this action for
26 failure to serve process. If Plaintiff is unable to provide the USM with additional information,
27 Defendant Idalberto Zaldivar-Galvez shall be dismissed from this action.

1 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

2 1. Within thirty (30) days from the date of service of this order, Plaintiff shall show
3 cause why Defendant Idalberto Zaldivar-Galvez should not be dismissed from this action
4 pursuant to Rule 4(m); and

5 2. Plaintiff's failure to respond to this order will result in a recommendation that
6 Defendant Idalberto Zaldivar-Galvez be dismissed from the action, without prejudice.

7 IT IS SO ORDERED.

8 Dated: May 9, 2023


UNITED STATES MAGISTRATE JUDGE